

1 Honorable Robert J. Bryan
2
3
4
5
6
7
8

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 DANIEL A. MCCAW,

10 Plaintiff,

11 v.

12 UNITED STATES OF AMERICA,

13 Respondent.

CASE NO. 16-cv-05701-RJB

DECLARATION OF RECORD
CUSTODIAN

I, Brian Allen Barker, hereby declare as follows:

1. I am a custodian of records of the Federal Bureau of Investigation ("FBI") Criminal
Justice Information Services Division's National Instant Criminal Background Check System
("NICS") Section in Clarksburg, West Virginia. I have reviewed the information maintained by the
NICS Section regarding an individual identified as Daniel A. McCaw.

2. Under the Brady Handgun Violence Prevention Act of 1993 ("Brady Act"), the U.S.
Attorney General was charged with establishing a system, the NICS, which Federal Firearms
Licensees ("FFL") must contact for a background check prior to transferring a firearm to a non-

23
DECLARATION OF RECORDS CUSTODIAN - 1
CASE NO. 16-cv-05701-RJB

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

1 licensee to determine if the transferee is prohibited under federal or state law from receiving or
2 possessing a firearm.

3 3. When an individual (non-licensee) attempts to purchase a firearm, he or she must fill
4 out an ATF Form 4473, which requests the personally identifying information regarding the
5 potential purchaser to permit the FFL to conduct a background check with the NICS.

6 4. The NICS searches three electronic databases containing records, which may reveal
7 information demonstrating the existence of state and federal records prohibiting receipt or possession
8 of firearms. These databases are: (1) the National Crime Information Center (NCIC), containing
9 records on wanted persons, protection orders, and other persons identified as relevant to the NICS
10 searches; (2) the Interstate Identification Index (III), which contains criminal history records; and (3)
11 the NICS Index, which contains information on prohibited persons as defined in 18 U.S.C. § 922(g)
12 or (n).

13 5. If the potential purchaser's name does not match any records searched by the NICS,
14 the NICS generates an automatic electronic response of "proceed" and a unique NICS transaction
15 number (NTN).

16 6. Upon confirmation that a record demonstrates an individual is not prohibited from
17 receiving a firearm, the NICS Section will inform the FFL to proceed with the transfer of the firearm
18 and to record this answer on the ATF Form 4473.

19 7. If the potential purchaser's name is electronically matched with a record contained in
20 any of the three databases, an NTN is generated and the NICS Section will perform a cursory review
21 in an attempt to complete the transaction while still on the telephone with the FFL. If the NICS
22
23

1 Section is unable to complete the transaction, the NICS Section will inform the FFL the transaction
2 must be delayed pending further research.

3 8. Upon confirmation that a record demonstrates an individual is prohibited from
4 receiving a firearm, the NICS Section will inform the FFL to deny the transfer of the firearm and to
5 record this answer on the ATF Form 4473.

6 9. The Brady Act (18 U.S.C. § 922(t)(2)(C)) requires that all NTNs and their creation
7 dates be retained indefinitely. Additionally, the FBI, pursuant to 28 C.F.R. § 25.9, is required to
8 maintain an automated NICS Audit Log of all incoming and outgoing transactions that pass through
9 the system, including the type of transaction, the time and date of inquiry, identifying information
10 about the prospective transferee, and the NTN. The NICS Audit Log is used to conduct audits of the
11 use and performance of the NICS and to detect misuse of the NICS.

12 10. Pursuant to 28 C.F.R § 25.9(b)(1), however, the NICS Section is required to destroy
13 all NICS Audit Log records relating to allowed transactions (other than the NTN assigned to the
14 NICS transaction and the date the NTN was assigned). This destruction requires the NICS Section
15 to destroy all personally identifying information regarding the transferee within 24 hours of
16 informing an FFL that the transaction may proceed.

17 11. Due to these regulations, if a potential purchaser is delayed or denied a firearm, but
18 later successfully appeals the decision, the NICS Section cannot retain a record of the overturned
19 appeal.

20 12. Pursuant to the NICS regulations, 28 C.F.R. § 25.9(b)(1)(i), denial information is
21 retained in perpetuity (within the Audit Log for ten (10) years and then transferred to a federal
22 records center).

13. NICS has conducted an audit pursuant to 28 C.F.R. §§ 25.9(2) and 25.11 of the NICS system for records associated with Daniel A. McCaw. As of October 17, 2016, the NICS revealed no records, in any of the databases searched indicating Mr. McCaw is prohibited from the receipt of a firearm in the state of Washington. The IFFS flag that had been placed on Mr. McCaw's record has been removed.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 18th Day of October, 2016

Brian W. Balmer

Brian Allen Barker
Legal Administrative Specialist
Clarksburg, West Virginia

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court
3 using the CM/ECF system which will send notification of such filing to the attorney(s) of record for
4 the petitioner(s).

5 Vitaliy Kertchen
6 KERTCHEN LAW PLLC
7 705 S 9TH STREET
8 SUITE 101
9 TACOMA, WA 98405
10 253-905-8415
11 Email: vitaliv@kertchenlaw.com

12 DATED this 18th day of October, 2016

13 */s/ Jessica M. Andrade*
14 JESSICA M. ANDRADE, WSBA #39297
15 Assistant United States Attorney
16 United States Attorney=s Office
17 700 Stewart Street, Suite 5220
18 Seattle, Washington 98101-1271
19 Phone: 206-553-8786
20 Fax: 206-553-4067
21 Email: Jessica.Andrade@usdoj.gov